

Serial No.: 09/878,860

Atty. Docket No. 006385.00001

REMARKS/ARGUMENTS

Through this petition and amendment applicants seek to have the subject application withdrawn from issue so that the specification can be updated (amended) to claim the benefit of applicants' earlier provisional application.

Supporting Facts:

Applicants were originally (though erroneously as confirmed by the recent grant of a petition) accorded a fillig date of May 10, 2002 for the subject application.

That date was more than a year after their earlier filed provisional application (June 13, 2000), thus making its benefit unavailable to applicants under 35 U.S.C. 119 up though the payment of the issue fee on May 24, 2004.

Nonetheless, as reflected by applicants' original Declaration (found for example at Tab 4 of the Renewed Petition for Corrected Filing Date submitted in September 2003) and in the original Official Filing Receipt issued by the USPTO (found for example at Tab C of the Renewed Petition for Corrected Filing Date submitted in September 2003), applicants always intended to claim (and attempted to claim) and the Patent Office understood that intent to claim the benefit of their original provisional application.

In other words the claim for priority was timely made and accepted. Only because they were long denied (albeit erroneously) the original filing date of their utility application, they were unable to present that claim for benefit of priority in the pending specification (the erroneously accorded date of the utility application was more than one year after the original provisional application date).

On June 7, 2004, after applicants had paid the issue fee on May 24, 2004, the Office of Petitions finally granted the petition and thus granted applicants their original utility filing date of June 9, 2001.

Having now been accorded that filing date, which is within a year of their initial provisional application filing date of June 13, 2000, applicants are also entitled to the benefit of their provisional application.

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Applicants thus petition to withdraw the case from issue so that the specification can be amended to reflect that benefit. That amendment should be entered.

We understand that the application is in the publications branch for processing for issuance. Thus, an early indication of the grant of this petition and entry of this amendment is respectfully requested. Even if the published application can not be corrected to reflect this amendment prior to printing, an indication of the entry of this amendment will allow applicants to correct the specification via a Certificate of Correction following issuance.

Since the requested amendment is supported by the facts, adds no new matter to the application, does not change the claimed invention and does not alter the nature of the allowed application, Applicants respectfully submit that the petition should be granted and the requested amendment should be entered. Entry of the amendment under Rule 312, by petition following withdrawal from issue, now is requested.

If there are any questions or a need for additional information, please contact the undersigned at his direct dial 202 824-3112

Respectfully submitted,

By: 

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